

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5643 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHUPATRAY O VYAS

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MRS KETTY A MEHTA for Petitioner

None present for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner and perused the Special Civil Application. There is no dispute that Health, Medical Education, Medical and Employees' State Insurance were four different wings of one department of Government, but there was watertight compartment in the categories of the post.

2. The petitioner was in service of the State of

Gujarat in the Medical Education Department and dispute relates to the promotion to the post of Personal Assistant (Sr.Administrative Officer Class-II) and consequential further promotions to the next higher posts. The promotions to the post of Personal Assistant (Sr.Administrative Officer Class-II) were given wing wise. This post, as stated earlier, was not interchangeable and as such on the basis of seniority in the lower cadre in concerned wing, the promotions were given to the higher post of the Personal Assistant (Sr.Administrative Officer Class-II). It is also not in dispute that from 31st May, 1978 all the wings were merged in one and a common seniority list of all the employees working in different wings had been prepared. Earlier to it, the promotion has been made on the basis of the wing's seniority.

3. The petitioner has come up with a case that Shri J.D. Dahade was promoted on the post of Personal Assistant (Sr.Administrative Officer Class-II) from 11th March, 1968 on the basis of his seniority in the wing concerned whereas he was promoted on this post in the year 1971. In the combined seniority list, the petitioner has been placed at Sr. No.41 whereas Shri J.D. Dahade was placed at Sr. No.48. The petitioner's claim for promotion to the post of Personal Assistant (Sr.Administrative Officer Class-II) from March, 1968 has to be considered which admittedly was not done. The petitioner made representations from time to time but his claim has been rejected on the ground that the deemed seniority cannot be granted and secondly that he was reverted in 1975 and then promoted in 1979 and therefore his services has to be taken from 1979. The reversion of the petitioner in the year 1975 and the promotion of the petitioner in 1979 are of no relevance whatsoever because after combined seniority list, a right has been accrued to the petitioner for consideration for promotion from March, 1968 when his junior, aforesaid has been given promotion. In view of this fact, the further contention made by the learned counsel for the petitioner need not be gone into.

4. The interest of justice will be met in case this Special Civil Application is disposed of with the direction to the respondent no.2 to consider the case of the petitioner for promotion to the post of Personal Assistant (Sr.Administrative Officer Class-II) with effect from March, 1968. While considering the case of petitioner for promotion for the aforesaid post from March, 1968, the Departmental Promotion Committee shall consider the service record of the petitioner as on

March, 1968. This exercise has to be undertaken by the respondent no.1 within a period of six months from the date of receipt of certified copy of this order. In case, the petitioner is found suitable for promotion to the post of Personal Assistant (Sr.Administrative Officer Class-II) from March, 1968 then he shall be entitled for all the consequential benefits on notional basis and not on actual basis till the filing of this Special Civil Application, but he shall be entitled for actual benefits from the date of filing of this Special Civil Application. Rule is made absolute in the aforesaid terms with no order as to costs.

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